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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. NABIL H. HADDAD, Defendant and Appellant.	B263509 (Los Angeles County Super. Ct. No. MA063918)

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles A. Chung, Judge. Affirmed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and Amanda V. Lopez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Nabil Haddad was convicted of one count of grand theft (Pen. Code, § 487, subd. (a)) for stealing auto repair equipment. He was sentenced to probation, including 180 days in jail. Defendant appeals, challenging only the sufficiency of the evidence that the value of the property stolen exceeded $950. We affirm.

" ' "The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" [Citation.]' " (*People v. Virgo* (2013) 222 Cal.App.4th 788, 797.)

A theft constitutes grand theft when the property taken exceeds $950 (Pen. Code, § 487, subd. (a)) and is petty theft when the value does not exceed $950 (Pen. Code, § 487f). In this case, the jury was instructed that, in order for a theft to constitute grand theft, the value of the property taken must exceed $950 (CALJIC No. 14.21).

It was further instructed that the appropriate test was the "reasonable and fair market value at the time and in the locality of the theft," (CALJIC No. 14.26) and that an "expression of opinion on value by the owner may be considered . . . in determining value together with any other evidence bearing on that issue" (CALJIC No. 14.27).

The evidence was as follows: Defendant leased premises from the victim Frank McHugh, on which defendant operated an auto repair shop. The previous lessee was Terry Etzler, who had also operated an auto repair shop at the property. When Etzler went out of business, he was over $15,000 arrears in rent. McHugh obtained a judgment against Etzler for that amount. In October 2012, Etzler and McHugh agreed that Etzler would give McHugh over $15,000 of auto shop equipment in satisfaction of the judgment. This equipment remained in the leased premises and defendant was permitted to use it in his business. However, when defendant was evicted for non-payment of rent in May 2014, he took with him most of the Etzler equipment and used it in his auto repair business at a new location.

The evidence that the stolen equipment exceeded $950 included the following: When McHugh agreed to accept the property from Etzler, Etzler created an itemized list of the equipment, setting forth the amount he had paid for each item, and estimating its then-current value. For some items, Etzler researched online what they were "currently selling for."[1] For one machine, Etzler had been given a current price from the individual who serviced the equipment. For the rest, Etzler estimated the value at approximately half of what he had paid, because his knowledge of used items is that they generally went for half the price. Both Etzler and McHugh believed that McHugh was receiving a greater value in equipment than the $15,000 he was owed. McHugh believed that, at the time of trial, the equipment was still worth the amounts estimated by Etzler.

Specific items of property stolen by defendant had been valued by Etzler as follows: (1) a brake lathe ($3,495); (2) portable alignment turntables and stands ($900); (3) a power steering flushing machine ($175); (4) an 8-zone security system ($450); (5) security cameras ($950); (6) a soda vending machine ($500); (7) a snack vending machine ($500); and (8) two waste oil containers ($350). Defendant offered no competing estimate of value. While, in argument, defendant questioned the reliability of Etzler's estimates, he did not indicate how property valued at over $7,000 at the time of the McHugh/Etzler settlement in October 2012 had somehow depreciated down to $950 or less when defendant took it in May 2014.

On appeal, defendant argues that the prosecution's evidence was insufficient to establish that the value of the stolen property exceeded $950. He raises three arguments, each of which is meritless. First, defendant argues there was no evidence of the condition of the items when he stole them in May 2014. Yet there was some evidence of the condition of the items; defendant was using some items in his auto body business, so the equipment was still usable. Moreover, photographs of the items were admitted into evidence, so the jury could determine condition for itself. Second, defendant argues that

[1] Defendant argues that Etzler relied on asking prices, rather than selling prices in completed transactions. There is no evidence of this; Etzler testified that he looked up the amounts the items were "selling for," not the amounts sellers were seeking.

Etzler's estimates did not establish fair market value because the Etzler/McHugh settlement was not an arm's-length transaction. While the Etzler/McHugh deal was not itself an arm's-length sale, the jury was well aware of the circumstances of the settlement and was free to determine whether Etzler had given McHugh a fair deal. Indeed, that Etzler gave McHugh the property in order to satisfy a judgment suggested that perhaps Etzler could have obtained more for the equipment, if he had been able to individually market each piece of equipment without being under pressure to sell. Third, defendant argues that the prosecution did not establish the actual fair market value of the equipment at the time of the theft. But the prosecution's burden is not to establish the exact fair market value of the stolen goods; it must only establish that the value exceeded $950. One of the stolen items was a brake lathe, which Etzler had purchased for $6,995 in 2009 and had valued at $3,495 in 2012. That defendant had bothered stealing this item, and its related equipment, in order to use it in his business implies that it was still functional. The jury could reasonably conclude that the brake lathe alone exceeded $950 at the time of the theft. That is sufficient to establish grand theft.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.